IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1298 of 2006
With
CRIMINAL APPEAL No. 1364 of 2006
With
CRIMINAL APPEAL No. 1412 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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OMPRAKASH DWARKAPRASAD SONI - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :

Criminal Appeal No. 1298 of 2006

MS SADHANA SAGAR for Appellant
MR KT DAVE ADDL. PUBLIC PROSECUTOR for Respondent

Criminal Appeal No. 1364 of 2006

MR YOGESH S LAKHANI for appellant

MR KT DAVE ADDL. PUBLIC PROSECUTOR for respondent

Criminal Appeal No. 1412 of 2006

MR YOGESH S LAKHANI for the appellant

MR KT DAVE ADDL. PUBLIC PROSECUTOR for respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/03/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Instant batch of three criminal appeals under Section 374 of the Code of Criminal Procedure ('the Code' for short) is directed against the judgment and order dated 9.6.2006 rendered in Sessions Case No.6 of 2005 by the learned Additional Sessions Judge, Fast Track Court No.2, Ahmedabad City, by which the appellants of all these three appeals, who are original accused Nos.1, 2 and 3 respectively ('A-1', 'A-2' and 'A-3' for short) have been convicted for commission of the offences punishable under Section 489B and Section 489C read with Section 34 and Section 120B of the Indian Penal Code ('IPC' for short) and all of them have been sentenced to suffer R.I. for ten years and fine of Rs.5,000/- i.d.,

R.I. for further period of one year for commission of the offenecs punishable under Section 489B and Section 489C read with Section 34 and Section 120B IPC.

2. The prosecution case as disclosed from the FIR and unwrapped during the trial is as under:

2.1. On 3.5.2004 at about 12.30 P.M., A-1, Omprakash Dwarkaprasad Soni, came to Bank of Baroda, Rakhial Branch, Ahmedabad for depositing an amount of Rs.20,000/- in Rs.1,000 denomination, in his S.B.A/c. No.17506. He filled up the pay-in-slip form which provides for necessary informations such as Account Number, name and also denomination of the currency notes, on the back side of it and thereafter presented the currency notes and the pay-in-slip form along with pass book before the cashier. The cashier found that the said currency notes of Rs.1,000 denomination were fake. He, therefore, contacted the Head Cashier, Assistant Branch Manager and Branch Manager of the bank. All of them also

verified the said currency notes presented by A-1 with the help of ultra-violet light and they also opined that the notes of Rs.1,000 denomination presented by A-1 were fake. The Branch Manager called A-1 in his chamber and thereafter contacted the head office on telephone soliciting advice. The head office of the Bank advised him to file complaint. On receiving the advice from the head office, P.W. 1, Ramanbhai Ishwarbhai Makwana, the Branch Manager, informed the PSI of Rakhial Police Station regarding the incident, pursuant to which PSI of Rakhial Police Station came to the Branch office of the Bank of Baroda, Rakhial Branch and made preliminary inquiry. PSI Rakhial Police Station also found that the currency notes of Rs.1,000 denomination presented by A-1 in the bank for depositing in his account were fake. Thereafter P.W.1, Ramanbhai Ishwarbhai Makwana, Branch Manager of Bank of Baroda, Rakhial Branch gave a written complaint on his Letter-pad with regard to the alleged incident.

2.2. Prior to registration of the complaint,

during the course of the inquiry, A-1 gave explanation that the said currency notes were given to him by his nephew, Nilesh alias Nilu Shivkumar Varma (Soni) (A-2). It was also explained by A-1 that he needed money for the purpose of marriage of his daughter and, therefore, he took loan from a Bank at Indore. The said bank sanctioned loan of Rs.25,000/- and he received the said amount of Rs.25,000/- in the currency notes of Rs.500 denomination. The said currency notes of Rs.500 denomination were exchanged with the currency notes of Rs.1,000 denomination from his nephew (A-2) and thereafter A-1 came to Ahmedabad and presented the currency notes of Rs.20,000/- in the denomination of Rs.1,000 for depositing the amount in his SB Account with Bank of Baroda, Rakhial Branch, Ahmedabad. During the course of further inquiry, A-2 was contacted at Indore on his Mobile No.09826451380 by P.W.2, Paresh Sharma, cashier of Bank of Baroda, Rakhial Branch, Ahmedabad, from his telephone. Reverting back, A-2 contacted P.W.2, Paresh Sharma from his same mobile phone

and talked for 173 seconds and during the conversion, prima facie, it was divulged that A-2 was also conspired with A-1 in the said scam.

2.3. Thereafter the complaint was registered before P.W.7, A.R. Patel, PSI, Rakhial Police Station, where it was registered vide CR No.I-55 of 2004 against A-1 and A-2 for commission of the offences punishable under Sections 489B and 489C IPC read with Section 34 IPC, which is on record at Ex.12.

2.4. Pursuant to the registration of the complaint, investigation was started by P.W.7, AR Patel, PSI, Rakhial Police station. During the course of investigation, he arrested A-1 and recorded statement of witnesses, recovered the pass book, pay-in-slip filled up by A-1 and the currency notes of Rs.20,000 in the denomination of Rs.1,000 presented by A-1 for depositing in his SB Account with Bank of Baroda, Rakhial Branch, Ahmedabad, after drawing a panchnama. Thereafter further statement of the P.W.1,

Ramanbhai Ishwarbhai Makwana, Branch Manager, Bank of Baroda, Rakhial Branch and other officers of the said bank were recorded. During the course of investigation, it was also disclosed by A-1 that two currency notes of Rs.1,000 denomination were given to J.J. Prajapati for exchange, therefore, P.W.7, A.R. Patel, PSI, Rakhial Police Station recorded statement of J.J. Prajapati. A-1 also told that 3 currency notes of Rs.1,000 denomination were given to Annapurna Trading Company. P.W.7, A.R. Patel, PSI, Rakhial Police Station, therefore, recorded statement of A.C. Prajapati, the owner of Annapurna Trading Company. Thereafter he obtained the remand of A-1 for seven days and after that the investigation was transferred to P.W.9, D.D. Sodha.

2.5. After taking over the investigation, P.W.9, D.D. Sodha obtained necessary permission from his higher-ups for interrogating A-2 of Indore and with the help of local police officers at Indore, P.W.9, D.D. Sodha called A-2 in Mahalganj police station, Indore, and

interrogated him. During the course of interrogation, P.W.9, D.D. Sodha got information that A-2 was also possessing similar fake currency notes. Therefore he raided the premises of A-2 in presence of panchas and during the raid, after drawing discovery panchnama, three currency notes of Rs.1,000 denomination were recovered from the steel cup-board from the premises of A-2. He also recovered the mobile phone of A-2 after drawing the panchnama. During the course of investigation, it was found that the series of the currency notes which were found from A-1 and A-2 is the same. He arrested A-2 and brought him to Rakhial Police Station. He thereafter sent the report to Metropolitan Magistrate's Court, Ahmedabad to add Section 120B. During the course of further investigation, A-2 stated that he procured the fake currency notes from Devendrasingh alias Sweety Harnamsingh Davar (Punjabi) (A-3). Therefore, he obtained necessary permission from his higher officer for going to Indore again and he went to Indore along with A-2. On reaching Indore, he inquired about

A-3. During the course of discussion with the S.T.F. Officer, Indore, it was revealed that A-3 was also arrested in connection with another offence and got information that A-3 was to come opp. Bombay Hospital on Devas Highway and, therefore, he kept a watch there and on arrival of A-3, he was intercepted and arrested and his person was searched. During the search of the person of A-3, seven currency notes of Rs.1,000 denomination were found. On verifying the same, it was found that they were also fake. Therefore those seven fake currency notes were also recovered in presence of panchas and A-3 was brought to Ahmedabad. Thereafter he sent the currency notes recovered from A-1, A-2 and A-3 to FSL, Gandhinagar for analysis. On receipt of the FSL report certifying that the currency notes recovered from the accused persons were fake and as sufficient incriminating evidence was found against all the three accused persons, they were charge-sheeted before the learned Metropolitan Magistrate's Court, Ahmedabad, for commission of the offences punishable under Sections 489B and

489C read with Section 34 and Section 120B IPC.

2.6. As the offences with which the accused persons were charged are exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate, Ahmedabad committed the case to City Sessions Court, Ahmedabad.

2.7. On committal, the learned Additional Sessions Judge, Fast Track Court No.2, Ahmedabad City, to whom the case was made over for trial, framed the charge against the accused persons for commission of the offences punishable under Sections 489B and 489C read with Section 34 and Section 120B IPC. The charge was read over and explained to the accused. The accused persons pleaded not guilty to the charge framed against them and claimed to be tried. Thereupon they were tried by the learned Additional Sessions Judge, Fast Track Court No.2, Ahmedabad City, in Sessions Case No.6 of 2005.

2.8. To prove the culpability of the accused

persons, the prosecution has examined in all 13 witnesses and relied upon their oral testimonies, the details of which are given in paragraph 2 of the impugned judgment and order. They are as under:

P.W. No.	Name	Status	Ex. No.	Page Nos.
1	Ramanbhai Ishwarbhai Makwana	Complain-ant	11	4-21
2	Paresh Sharma	Chief cashier	15	24-30
3	Mahendrabhai Amarsinh Lodha	Head cashier	17	31-35
4	Pradipbhai Bansilal Kansara	Panch	19	36-39
5	Purshottamdas Shankerlalji Tandon	Panch	22	42-44
6	Rameshbhai Motilal Malaviya	Panch	24	49-51
7	Arvindbhai Ravjibhai Patel	I.O.	26	55-61
8	Jayantibhai Jethabhai Prajapati	Witness	31	62-63
9	Digvijaysinh Devisinh Sodha	I.O.	33	64-81
10	Vinod Joitaram Choudhari	I.O.	60	105-111
11	Sanjeev Devidas Mulle	P.S.I. Indore	78	138-143
12	Arunbhai Kamlakar Thakre	Witness	82	144-147
13	Dilip Shrinivas Mutali	Witness	88	152-154

2.9. To prove the charge levelled against the accused persons, the prosecution has also produced number of documents and relied upon the contents of the same, such as, complaint, panchnama, FSL report, various reports made to higher up police officers by the investigating officers, yadi sent to Indore police station, computer sheet of mobile phone of A-2, the relevance of which for deciding these appeals will be discussed hereinafter in this judgment at the appropriate time.

2.10. After recording of the evidence of the prosecution witnesses was over, the learned trial Judge explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statement under Section 313 of the Code. In their further statement they denied the case of the prosecution in toto. They neither led any

evidence nor examined any witness to support their defence.

2.11. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial court has recorded the finding in para 25 of the impugned judgment and order holding that the prosecution has been able to establish the complicity of the accused persons for commission of the offences as per the charge. It has also been held by the trial court that notwithstanding the knowledge A-1 had that the 20 currency notes of Rs.1,000 denomination he had with him were fake, he tried to deposit the same in his S.B. Account with the bank and thereby tried to traffic in or used as genuine. It has also been held that A-1 has obtained the said fake currency notes from A-2 and A-2 was found with 3 fake currency notes of Rs.1,000 denomination from Indore and A-3 was also found with seven fake currency notes of Rs.1,000 denomination from Indore. All the fake currency notes which were found from all the accused persons were recovered

by drawing panchnama. The series number of all the fake currency notes recovered from the accused persons was the same and, therefore, all the accused had the common intention and they hatched up conspiracy to traffic in or use the counterfeit currency notes as genuine currency notes. On the aforesaid findings, the trial court has convicted all the three accused persons for commission of the offences punishable under Sections 489B and 489C read with Sections 34 and 120B IPC and sentenced them for the same about which reference is made in earlier paragraphs of this judgment, giving rise to these three appeals, being Criminal Appeal No. 1298 of 2006 filed by A-1, Criminal Appeal No.1364 of 2006 filed by A-2 and Criminal Appeal No. 1412 of 2006 filed by A-3.

3. Ms. Sadhna Sagar, learned advocate for A-1 and Mr. Yogesh S. Lakhani, learned advocate for A-2 and A-3, have submitted that the trial Court has committed a grave error in appreciating the facts and the evidence on record and has wrongly

convicted the accused for the offences with which they are charged. According to them, in the entire length and breadth of the prosecution evidence, ingredients to prove the commission of the offences under Sections 489B and 489C are not satisfied because none of the accused had the knowledge that the currency notes possessed by them were fake. The evidences adduced by the prosecution do not even remotely suggest that the accused had any knowledge that they were possessing fake currency notes and not genuine currency notes. Evidence in this regard is totally silent.

3.1. According to Ms. Sagar, learned advocate for A-1, the conduct of A-1 is also very relevant. When the bank officers alleged that the currency notes presented by him were fake, he did not try to withdraw the same or ran away from the bank but, on the contrary, he gave name of A-2 from whom he exchanged the currency notes of Rs.1,000 denomination, which according to the prosecution, are fake currency notes, by giving

currency notes of Rs.500 denomination. If there was any mens-rea on his part, he would have immediately ran away from the bank and would not have given name of A-2. The trial Court has miserably failed to appreciate this aspect. The conduct of A-1 was such that there was no mens-rea and he had no knowledge that the 20 currency notes of Rs.1,000 denomination presented by him in the bank for depositing in his S.B. Account are fake. Even the evidence of the bank officers also suggest that a bare look at those currency notes of Rs.1,000 presented by A-1 the currency notes do not reflect that they are fake currency notes but if the currency notes are examined by the expert then only one can come to the definite conclusion that those notes are fake.

3.2. Mr. Yogesh Lakhani, learned advocate for A-2 and A-3, has submitted that merely because of recovery of 3 currency notes of Rs.1,000 denomination from A-2, the allegation that the currency notes of Rs.1,000 denomination recovered from A-2 are fake and it cannot be said that the

charge against A-2 was proved for following reasons:

(i) The Panch witness – Purshottam Tandon has not supported the case of the prosecution and the panchnama under which the recovery of 3 alleged notes was shown is not proved on record.

(ii) The second panch witness, Mahesh Joshi, appears not to have been examined in the case to prove the said panchnama.

(iii) The prosecution though tried to project its case that on 3.5.2004 A-1 had a telephonic talk from the mobile phone of the cashier of the bank named Paresh Sharma, at Indore, the panchnama of the alleged recovery of 3 currency notes of Rs.1,000 denomination from A-2 is prepared on 7.5.2004 i.e., after four days of lodgment of FIR and it is not possible to believe that though A-2 was made aware about A-1 having been caught at Ahmedabad with fake currency notes

he would keep 3 currency notes of Rs.1,000 denomination in his house with the knowledge or having reason to believe that the 3 currency notes are fake.

(iv) The prosecution has miserably failed to show anything on record except the so-called recovery panchnama, which is not proved on record, to point out that A-2 was having possession of 3 currency notes of Rs.1,000 denomination which are found to be fake and further that he had any knowledge that such notes are fake.

3.3. Mr. Lakhani, learned advocate for A-2 and A-3, has submitted that so far as A-3 is concerned, the allegation that from him 7 currency notes of Rs.1,000 denomination were found cannot be said to have been proved for the following reasons:

(i) The recovery panchnama drawn on 16.5.2004 to the effect that 7 fake currency notes of Rs.1,000 were recovered from A-3 is also not proved on

record inasmuch as the first panch witness Ramesh Malaviya has not supported the case of the prosecution and the second panch witness Suresh Dayaram is not examined in the case.

(ii) The alleged recovery of 7 currency notes of Rs.1,000 denomination from A-3 would not in any way, ipso facto, prove the possession of 7 currency notes from A-3 and that too attributing any knowledge or reason to believe that A-3 possessed such notes knowing them to be fake when panchnama of recovery is not proved on record and when there is no other evidence available to prima facie show any knowledge on the part of A-3.

(iii) It is also high-lighted by him that the prosecuting agency has deliberately and conveniently not investigated the case any further if it wanted to allege against A-2 and A-3 that they had possessed those currency notes with any knowledge that they have either received the same from a particular source on purchase or

otherwise and further that how and where such currency notes have been counterfeited, manufactured and prepared and also with the help of the instruments and machineries. According to him, the prosecuting agency has not shown anything on record that it has gone even a little deep into investigating the case to go to the root of the case but instead by just preparing two recovery panchnamas which are not proved on record that the charge sheet is filed against A-2 and A-3 improperly.

3.4. From the aforesaid facts and circumstances, according to him, it becomes clear that none of the offences under Sections 489B or 489C IPC can be said to have been proved against A-2 and A-3.

3.5. It is also emphasized by him that the prosecuting agency has also miserably failed to prove on record any evidence so as to link A-2 and A-3 either with A-1 or any other accused for invoking Section 34 or Section 120B IPC.

Neither the common intention nor conspiracy is brought on record or is proved with even scanty evidence on record so as to book A-2 and A-3 for the same. It is also asserted by him that the evidence of the bank officers as well as the police officers who investigated the case create doubt about genuineness of the whole prosecution case made out against the accused persons.

3.6. On the aforesaid premises, it is submitted by the learned advocates appearing for the accused persons that the prosecution has failed to prove the charge levelled against the accused for commission of the offences under Sections 489B and 489C read with Section 34 and Section 120B IPC. There is no evidence on record to suggest that there was any knowledge to the accused persons that the currency notes of Rs.1,000 which they were possessing were fake and therefore ingredients of Section 489B and Section 489C are not established. The investigating agency has not found out the root with regard to who has manufactured or who has prepared the said

fake currency notes. Therefore, the impugned judgment and order is based on “no evidence”. Therefore, the same deserves to be quashed and set aside by allowing all these appeals. They, therefore, urged to allow the appeals and thereby all the accused may be acquitted of the offences with which they are charged.

3.7. In support of the aforesaid submissions, learned advocates for the accused persons have relied upon the following judgments of the Supreme Court as well as other High Courts:

(i) M. Mammutti v. State of Karnataka, AIR 1979 SC 1705,

(ii) T.J. Mohan v. State, (Madras High Court), 1995 (3) Crimes, 842,

(iii) Hamid Ali and another v. The State, AIR 1961, Tripura, 46,

(iv) Madan Lal Sarma v. The State, 1990 Cr.LJ (Calcutta), 215 and

(v) Umashanker v. State of Chhattisgarh, AIR 2001 SC 3074.

3.8. In the alternative submission, Ms. Sagar, learned advocate for A-1 and Mr. Lakhani, learned advocate for A-2 and A-3, have submitted that if this Court comes to the conclusion that the prosecution has established the charge levelled against the accused persons, so far as quantum of punishment is concerned, leniency may be shown upon the accused persons looking to the number of currency notes which were found from them. They have also produced affidavit sworn by Vimlaben, wife of Omprakash Soni (A-1) and Kanhaiyalal Shrihari Soni, paternal uncle (Fua) of Nilesh alias Nilu Shivkumar Varma (Soni) (A-2) wherein the mitigating circumstances for imposing less sentence on A-1 and A-2 have been narrated. Mr. Lakhani, learned advocate for A-2 and A-3, has submitted that so far as A-3 is concerned, no affidavit is produced on record. However, looking to the number of currency notes recovered from him, leniency may be shown to him also so far as quantum of sentence is concerned. They submitted that all the accused have undergone almost three

years' imprisonment so far, therefore, the sentence undergone by them may be treated as substantive sentence for commission of the offences alleged against them and they may be set at liberty and the order of sentence may be suitably modified to the said extent. They, therefore, urged to pass appropriate order with regard to quantum of punishment, taking a liberal and lenient view in the matter.

4. In counter submission, Mr. K.T. Dave, learned APP, submitted that there is voluminous evidence against the accused persons that they have committed the offences under sections 489B and 489C IPC. So far as A-1 is concerned, according to him, he made effort to deposit fake currency notes of Rs.20,000 of the denomination of Rs.1,000 in his S.B. Account with Bank of Baroda, Rakhial Branch, knowing fully well that they were fake currency notes and he was caught by bank officers. He further submitted that as per the information supplied by A-1, A-1 has exchanged the said currency notes from A-2 who was also

found with three fake currency notes of Rs.1,000 denomination at his residence at Indore when his house was raided by the investigating officer. It is also asserted by him that A-2 has given information to the investigating officer that all the currency notes which were found from him as well as from A-1 were supplied by A-3 and A-3 was found with 7 fake currency notes. The number of the said currency notes tallied with all other fake currency notes recovered from A-1 and A-2 and they were of same series. Therefore, this is one of the important circumstances which establishes the guilt of the accused and there was mens-rea on their part to circulate fake currency notes in the market. The evidence of bank officers are unimpeachable which inspire confidence and, therefore, there is no reason to discard the same. Therefore, according to him, the trial court has rightly recorded the conviction and sentence against the accused which does not require interference of this court in these appeals filed by the accused persons.

4.1. So far as the alternative submission made by the learned advocates for the accused regarding showing leniency is concerned, he submitted that the offence committed by the accused persons is a serious offence. He also asserted that the offence of counterfeiting currency notes is a crime against the Nation and it will affect the economy of the country adversely and, therefore, no leniency can be shown against any of the accused persons. He, therefore, submitted that there is no merit in the appeals and urged to dismiss all the three appeals.

5. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a compete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read an re-read by the learned advocates for the parties with reference to broad and

reasonable probabilities of the case. In light of the caution sounded by the Supreme Court while dealing with criminal appeals, this court has examined the entire evidence on record for itself independently of the trial Court and considered the arguments advanced on behalf of the accused persons and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

6. In order to prove the culpability of the accused, the prosecution has examined and relied upon the evidence of P.W.1, Ramanbhai Ishwarbhai Makwana, complainant, Ex.11, pages 4 to 21 of the paper book. He has, inter alia, testified that on 3.5.2004 he was working as Branch Manager of Bank of Baroda, Rakhial Branch in which A-1 was having S.B. Account No.17506. At the relevant time, Mahendrabhai Amarsinh Lodha, was the head cashier, Ashwinbhai Bhatt was the Accountant and Paresh Sharma was the receiving cashier. On that

day A-1 came to the bank with 20 notes of Rs.1,000 denomination to deposit Rs.20,000 the same in his S.B.Account. Paresh Sharma who was the receiving cashier doubted about the genuineness of the currency notes presented by A-1 for depositing in his S.B. account and, therefore, he examined the said notes minutely and thereafter he went to Mahendrabhai Lodha, Head Cashier with the said notes and thereafter they went to the room of Ashwinbhai Bhatt, Accountant and all of them thereafter came to his chamber. All of them verified the said notes and according to all of them the said notes were fake. He, therefore, informed the head office of the bank about the incident and the head office in turn directed him to lodge complaint. Prior to that they also verified the said notes on ultra violet lamp. On ultra violet Lamp the paper appeared to be thick, colour was different than the genuine currency notes, the security thread was thin and the symbol of Mahatma Gandhi was also different. Therefore, the genuineness of the

notes was doubtful. He, therefore, called A-1 in his chamber and made inquiry. During his inquiry A-1 told him that he brought the said notes from his nephew (A-2) staying at Indore. He also stated that he obtained loan of RS.25,000 from Bank of India, Indore Branch which gave him the said amount in the currency notes of the denomination of Rs.500. Thereafter he exchanged the said notes of Rs.500 denomination with the currency notes of Rs.1,000 denomination from A-2. He has further testified that he telephoned to Rakhial police station and informed about the said incident to the police officer and the PSI of Rakhial Police station came to the bank and taken written complaint from him. In the said complaint he has also mentioned all the numbers of the 20 currency notes which were produced by A-1 and thereafter the said currency notes were recovered by the police officer. The complaint was in the hand writing of Ashwin Bhatt, Joint Manager. He has identified the said currency notes in the Court while recording his oral

testimony. He has also identified A-1 in the Court. He has also identified his signature beneath the complaint. The said complaint is produced at Ex.12. A perusal of the complaint, it is seen that the number of the currency notes are also noted therein. The oral testimony of P.W.1 gets corroboration from the complaint.

6.1. It may be noted that this witness was subjected to lengthy cross-examination by the learned advocate for the accused. During the cross-examination, he repelled all the suggestions put to him and withstood the test of cross-examination. During the cross-examination he has also stated about the normal procedure adopted by the bank when they receive fake currency notes.

7. The prosecution thereafter has examined and relied upon the evidence of P.W.2, Paresh Sharma, Chief Cashier, Ex.15, pages 24 to 30 of the paper book. He has inter alia testified that

on 3.5.2004 he was working as Cashier in the Bank of Baroda, Rakhial Branch. Vimlaben Patel was the Main Cashier but she was on leave on that day and, therefore, he was in-charge of the main cashier. His work was to receive the cash. Mahendrabhai Amarsinh Lodha, was the Head Cashier. He has testified that at about 2.00 – 2.30 P.M. A-1 who was having S.B. account with the said bank came to the bank with 20 currency notes of Rs.1,000 denomination for depositing the same in his S.B. account. On preliminary examination of the said currency notes, he felt that the papers of the said currency notes were thick. He, therefore, examined the same in the bulb and he found that the notes are of dubious nature. Therefore, he checked them on ultra violate lamp. On checking the same on ultra violet lamp he found that the notes were of dubious nature i.e., not genuine. The colour of the said currency notes was found fainted as compared with genuine currency notes. The symbol of Mahatma Gandhi on the notes was also different. He, therefore, went to Mahendrabhai

Amarsinh Lodha, Head Cashier, who examined the same. Mahendrabhai Amarsinh Lodha informed Ashwin Bhatt, Accountant about the same. The accountant informed the Branch Manager that the currency notes of Rs,1,000 were fake. They checked the said currency notes and all of them found that the said currency notes were fake. Therefore, Ramanbhai Ishwarbhai Makwana informed the police of Rakhial Police station and on arrival of the police officer from Rakhial Police station, a complaint was given by Ramanbhai Ishwarbhai Makwana. He has also testified that the police has recored his statement.

7.1. This witness was also cross-examined at length by the learned advocates for the accused and he withstood the test of cross-examination and nothing substantial has been brought out which would impeach the credibility of this witness.

8. The prosecution has thereafter examined and relied upon the testimony of P.W.3, Mahendrabhai

Amarsinh Lodha, Head cashier, Ex.17, pages 31 to 35 of the paper book. He has, inter alia, testified that on 3.5.2004 he was serving as Head Cashier in the Rakhial Branch of Bank of Baroda. On that day, A-1 came to his Bank for depositing Rs.20,000 in his SB Account with 20 currency notes of Rs.1,000 denomination. A-1 filled in the pay-in-slip and produced Rs.20,000/- before Paresh Sharma, Main Cashier. Paresh Sharma, on checking, found that the notes presented by A-1 were of dubious nature. Paresh Sharma, therefore, handed over those currency notes to him. On checking he also found that those notes were not genuine. The paper was thick, security thread was thin and the mark of Mahatma Gandhi was different than found on genuine currency notes. Thereafter they went to Ashwin Bhatt, Accountant, who also found that the said notes were of dubious nature. Thereafter the Branch Manager called the police. In sum and substance he also deposed the same version as deposed by P.W.1 and P.W.2.

9. The prosecution has thereafter examined and relied upon the evidence of P.W.7, Arvindbhai Ravjibhai Patel, investigating officer, Ex.26, pages 55-61 of the paper book. He has testified that on 3.5.2006 he was PSI in Rakhial Police Station. On that day at about 6 P.M. he received a telephone call from the Branch Manger of Bank of Baroda, Rakhial Branch and he was informed that one Omprakash Dwarkaprasad Soni tried to deposit fake currency notes of Rs.20,000 in the denomination of Rs.1,000 in his S.B. Account with the bank. He therefore reached the Bank and made necessary inquiry and the Branch Manger lodged the written complaint which he has registered against the A-1 and A-2. Thereafter he called 2 panchas and in the presence of the panchas he recovered Rs.20,000/- i.e., 20 notes of Rs.1,000 denomination tendered by A-1 in the bank and he also recorded the statement of witnesses and A-1 was arested. He has also identified the complaint which is on record at Ex.12. He has also testified that before him also A-1 has made the same statement as made by him before P.W.1,

Ramanbhai Ishwarbhai Makwana, that he has got those currency notes from A-2. Therefore A-2 was contacted on mobile phone at Indore. A-2 stated that he has given Rs.25,000/- in the denomination of Rs.1,000 currency notes to A-1. During the course of interrogation of A-1, he has stated similar version before P.W.1. A-1 has stated before him that he has obtained the currency notes from Nilesh (A-2). He also testified that during further interrogation, it was revealed that A-1 has obtained Rs.25,000/- (25 currency notes of Rs.1,000 denomination) from A-2. Out of that, 2 currency notes of Rs.1,000 denomination he has changed with Jayantibhai Jethabhai Prajapati and three currency notes of Rs.1,000 denomination he has paid to Arvindbhai Chaturbhai Prajapti, who is the owner of Annapurna Trading Company. He has recorded the statement of Jayantibhai Jethabhai Prajapati as well as Arvindbhai Chautrbhai Prajatpi and recovered copy of bill No.356 and also obtained remand of A-1 for seven days. Thereafter he handed over the investigtaion to Digvijaysinh Devisinh Sodha,

investigating officer.

10. The prosecution has thereafter examined and relied upon the oral testimony of P.W.8, Jayantibhai Jethabhai Prajapati, witness, Ex.31, pages 62-63 of the paper book. In his oral testimony, he has confirmed that A-1 came to him to change two currency notes of Rs.1,000 denomination. He has also identified A-1 in the court. He has further stated that he has given two currency notes to purchase wheat from market.

11. The prosecution has thereafter examined and relied upon the oral testimony of P.W.9, Digvijaysinh Devisinh Sodha, investigating officer, Ex.33, pages 64-81. He has inter alia testified that after taking over the investigation from Arvindbhai Ravjibhai Patel, he obtained permission from his higher officer to visit Indore to interrogate A-2 and went to Indore and with the help of local police officers at Indore, P.W.9, D.D. Sodha called A-2 in

Mahalganj police station, Indore, and interrogated him. During the course of interrogation, P.W.9, D.D. Sodha got information that A-2 was also possessing similar fake currency notes. Therefore, he raided the premises of A-2 in presence of panchas and during the raid, after drawing discovery panchnama, three currency notes of Rs.1,000 denomination were recovered from the steel cup-board from the premises of A-2. He also recovered the mobile phone of A-2 after drawing the panchnama. During the course of investigation, it was found that the series of the currency notes which were found from A-1 and A-2 is the same. He arrested A-2 and brought him to Rakhial Police Station. He thereafter sent the report to Metropolitan Magistrate's Court, Ahmedabad to add Section 120B. During the course of further investigation, A-2 stated that he procured the fake currency notes from Devendrasingh alias Sweety Harnamsingh Davar (Punjabi) (A-3). Therefore, he obtained necessary permission from his higher officer for going to Indore again and he went to Indore along

with A-2. On reaching Indore, he inquired about A-3. During the course of discussion with the S.T.F. Officer, Indore, it was revealed that A-3 was also arrested in connection with another offence and got information that A-3 was to come opp. Bombay Hospital on Devas Highway and, therefore, he kept a watch there and on arrival of A-3, he was intercepted and arrested and his person was searched. During the search of the person of A-3, seven currency notes of Rs.1,000 denomination were found. On verifying the same, it was found that they were also fake. Therefore those seven fake currency notes were also recovered in presence of panchas and A-3 was brought to Ahmedabad. Thereafter he sent the currency notes recovered from A-1, A-2 and A-3 to FSL, Gandhinagar for analysis.

12. The prosecution has thereafter examined and relied upon the testimony of P.W.10, Vinod Joitaram Choudhari, investigating officer, Ex.60, pages 105-111 of the paper book. He has, inter alia, testified that on 3.5.2004 he was working

as PSI at Rakhial Police station. He has called for the information with regard to previous offences committed by A-3 by sending R.B. Masani to Ludhiana. He has also testified that one Samsuddin was booked in Ludhiana in connection with some offence. He has also called for the FIR from Ludhiana Division II. During his inquiry it was divulged that seven offences were registered against him.

13. The prosecution thereafter has examined and relied upon the evidence of P.W.11, Sanjeev Devidas Mulle, PSI of Indore, Ex.78, pages 138-143. He has inter alia testified that on 16.5.2004 he was serving as PSI Special Task Force, Indore. At that time, P.W.9, D.D. Sodha, PSI of Rakhial police station of Ahmedabad came to his office in connection with investigation of the offence. He was conveyed the details about the said offence and he was given the information that A-3 was to come near Bombay Hospital and therefore he made necessary arrangement to keep watch over him and when A-3 came there he was

intercepted and on search of his person, seven currency notes of Rs.1000 denomination were recovered from him after drawing panchnama. He also recovered the mobile phone and arrested him and D.D. Sodha brought him to Ahmedabad.

14. All the above mentioned witnesses were cross-examined at length by the learned advocates for the accused. All of them withstood the test of cross-examination and nothing substantial has been brought out in their cross-examination which would impeach their credibility with regard to recovery of the fake currency notes as well as arrest of the accused persons in presence of panchas.

15. The prosecution has thereafter examined and relied upon the evidence of P.W.4, Pradipbhai Bansilal Kansara, Panch witness, Ex.19, pages 36-39 of the paper book. He is the panch witness in whose presence 20 currency notes of Rs.1,000 denomination which were produced by A-1 before the P.W.2, Paresh Sharma, Chief Cashier for

depositing them in his SB Account, and panchnama was prepared and he has deposed as per the contents of the panchnama.

16. The prosecution has thereafter examined and relied upon the evidence of P.W.5 Purshottamdas Shankerlalji Tandon, a panch, Ex.22, pages 42-44. He is the panch witness in those presence A-2 made statement with regard to showing 3 currency notes of Rs.1,000 denomination which were kept by him in the steel cupboard in his house. He has not supported the prosecution case and therefore he was cross-examined by the learned APP at length. During the cross-examination also he has stuck his version that A-2 has never shown his willingness to show the currency notes as per the prosecution case in his presence when panchnama under section 27 of the Evidence Act was drawn.

17. The prosecution has thereafter examined and relied upon the evidence of P.W.6, Rameshbhai Motilal Malaviya, Panch witness, Ex.24, pages 49-51 of the paper book. He is the panch witness in

whose presence 7 currency notes of Rs.1,000 denomination were recovered from A-3. He has also not supported the prosecution case and therefore he was cross-examined by the learned A.P.P.

18. Mr. Lakhani, learned advocate for A-2 and A-3 has submitted that both P.W.5 and P.W.6, who were the panch witnesses in respect of the recovery of fake currency notes from A-2 and A-3 have not supported the prosecution case with regard to recovery of fake urgency notes from A-2 and A-3 and therefore recovery of fake currency notes from A-2 and A-3 has become doubtful and, therefore, prosecution case cannot be believed.

19. According to this Court, the aforesaid submission has no substance. It is well settled that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It may be realized that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the

increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would be giving a right to veto to the panchas so far as the question of culpability of an accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officer, if otherwise found to be true and dependable, cannot be discarded by court on the ground that he is a police officer. On the facts and in the circumstances of the case, this Court finds that testimonies of P.W.1, Ramanbhai Ishwarbhai Makwana, Branch Manager of Bank of Baroda, Rakhial Branch, complainant, Ex.11, P.W.2, Paresh Sharma, Chief Cashier, Ex.15, P.W.3, Mahednrabhai Amarsinh Lodha, Head Cashier, Ex.17, P.W.7, Arvindbhai Ravjibhai Patel, investigating officer, Ex.26, P.W.9, Digvijaysinh

Devisinh Sodha, P.W.10, Vinod Joitaram Choudhari, investigating officer, P.W.11, Sanjeev Devidas Mulle, PSI Indore, Ex.78, are not only inspiring confidence, but, get corroboration from the other evidence on record and from the evidence of the police officers, the contents of the panchnama have been proved and it is given exhibit number as well. Therefore, according to this Court, the said panchnama can be relied upon to decide the complicity of the accused. Moreover, from the evidence of Police officers, Ex.23 and Ex.25 with respect to recovery of fake currency notes from A-2 and A-3 have been duly proved.

20. On overall reappreciaton of the evidence of the prosecution witnesses, which have been discussed in the foregoing paragraphs, according to this court, the prosecution has successfully established that A-1 has presented Rs.20,000 i.e., 20 currency notes of Rs.1,000 denomination for depositing in his SB Account with Bank of Baroda, Rakhial Branch. Similarly from the steel cupboard in the house of A-2 also three fake

currency notes of Rs.1,000 denomination were recovered. Likewise, from A-3 also seven fake currency notes of Rs.1,000 denomination were recovered when he was intercepted near Bombay Hospital, Indore. The FSL report at Ex.71 in terms certified that those currency notes which were sent for analysis were fake currency notes. The prosecution has, therefore, successfully established that the currency notes recovered from all the three accused persons were fake currency notes.

22. As per the prosecution case, so far as the instant case is concerned, the source of fake currency notes was A-3 who has given the fake currency notes to A-2 and A-2 in turn gave to A-1. All the currency notes are of same series and therefore it has to be held that they all had the knowledge at the time of possessing the currency notes that they were fake currency notes. Therefore, the ingredients of Sections 489B and section 489C are proved.

23. The contention of Ms. Sadhna Sagar, learned advocate for A-1 that when the officers of the Bank told A-1 that the genuineness of the currency notes tendered by him for depositing them in his SB Account is doubtful, he neither withdrew them nor did he run away from the bank and therefore there was no mens-rea on the part of A-1 and he informed the officers of the bank and also the police officer that he got those notes from A-2 who is at Indore and thereby he has given the source of the fake currency notes and therefore there is no mens rea for committing the offence by A-1, has no substance.

24. It may be noted that when he was called by the Branch Manager in his chamber, he was surrounded by so many officers of the bank and in the meanwhile the Branch Manager had asked him about the source of the notes and thereafter the police was also called and a written complaint was given. Therefore, if he would have tried to run away, then also it would not have been much helpful to him because he was having a S.B.

Account with the said bank with which his address was available. In these circumstances, the contention that A-1 did not try to withdraw the currency notes nor did he try to run away from the bank and, therefore, there was no mens-rea on the part of A-1 has no substance and merits and deserves to be rejected and accordingly it is rejected.

25. The contention raised by Mr. Lakhani, learned advocate for A-2 that though A-2 knew on telephone that his uncle A-1 was apprehended and arrested at Ahmedabad in connection with trying to deposit fake currency notes in the bank and, therefore, it will be difficult to believe that A-2 had possessed three fake currency notes there was no mens rea on his part has also no substance.

26. When A-2 was called on telephone from the Rakhial Branch of Bank of Baroda, he might not have thought that a complaint would have lodged against his uncle A-1. Thereafter his uncle, A-1,

was arrested and taken to the police custody, therefore, he had no occasion to contact his uncle and hence he might have thought that the chapter has been closed and therefore he has not destroyed the said currency notes and in that view of the matter the contention raised on behalf of A-2 has also no merit and is accordingly rejected.

27. On over all reappreciation of the evidence of the prosecution witnesses, according to this court, there is evidence against A-1 that he himself has produced fake currency notes before the Bank of Baroda, Rakhial Branch for depositing the same in his S.B. Account fully knowing that those currency notes were fake and thus he is involved in trafficking in or using the fake currency notes as genuine knowing fully well that the said currency notes were counterfeit. There is evidence on record to the effect that A-1 has received those currency notes from A-2. Similarly, there is evidence on record that A-2 has given Rs.25,000/- to A-1 (25

currency notes of Rs.1,000/- denomination) in exchange of the currency notes of Rs.500/- denomination. It has also come in evidence that A-2 has received those currency notes of Rs.1,000/- from A-3. A-2 also knew that those currency notes which he had received from A-3 and in turn given to A-1 were fake currency notes. From the steel cup-board of the house of A-2, three fake currency notes of Rs.1,000 were recovered. Similarly, when A-3 was apprehended and searched, from his person, 7 fake currency notes of Rs.1,000/- were recovered. Moreover, the series number of all the currency notes recovered from A-1, A-2 and A-3 was the same. Therefore, it is clear that A-1, A-2 and A-3 have possessed those currency notes knowing fully well that they are fake currency notes and they tried to traffic in or use them as genuine currency notes. Therefore, on the basis of the circumstantial evidence, it is proved that all the three accused persons possessed those currency notes knowing fully well that those currency notes were fake and thereby committed the offence under Sections

489B and 489C by passing and trafficking in or using the same as genuine and, therefore, the charge against them for commission of offences under sections 489B and 489C read with Sections 34 and 120B IPC has been proved.

28. On close scrutiny of the evidence on record, we find no infirmities in the findings, ultimate conclusion and the resultant order of conviction recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction passed by the trial court, as according to us, no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

29. So far as the judgments relied upon by the learned advocates appearing for the parties are concerned, according to us, there cannot be two opinion with regard to the proposition laid down therein. But the facts of those cases are different from the facts of instant appeals. In

those cases before the Supreme Court and other High Courts, there was no knowledge on the part of the accused that the currency notes recovered from them were fake or counterfeit but in this case, all the accused persons possessed the counterfeit currency notes knowing fully well that they are counterfeit currency notes and in spite of that knowledge they possessed the same and tried to traffic in or used as genuine currency notes. Therefore, it is not necessary for us to discuss those judgments relied upon by the learned advocates for the accused persons in this judgment with a view not to burden this judgment.

30. This takes us to examine the alternative prayer advanced on behalf of the accused persons with regard to showing leniency towards them by reducing the sentence.

31. In this connection, we have perused the affidavit sworn by Vimlaben, wife of Omprakash Soni (A-1) wherein she has, inter alia stated on

oath as under:

> “1. That appellant Omprakash Dwarkaprasad Soni is my husband and he has been convicted for the offences punishable under Section 489-B and 489-C read with Sec.34 and 120B of the Indian Penal Code and is directed to undergo 10 years rigorous imprisonment and fine of Rs.5,000/- and in default to further undergo one year rigorous imprisonment. I say that the fine is already paid by him.
>
> 2. I say that the appellant – Omprakash was shouldering the responsibility of his entire family consisting of his wife, i.e., I myself, and two daughters and one son. That I i.e., myself is patient of Heart problem, Diabetes and prostate and at present she is under treatment and care of the doctors of the Civil Hospital, Gandhinagar. That elder daughter of the appellant – namely Rinki aged about 23 years, is only earning at present and she is working in the Cargo Motor, for

the post of Computer Operator and she is only earning member. And yet she is unmarried and looking to her age, her marriage is also required to be solemnized. That one other daughter namely Chatulatta – who is studying in T.Y.B.A. and her age is also marriageable age of 21 years and she is looking the household affairs as health of the mother is not good. That one son of the appellant, namely Chirag – aged about 15 years is studying in standard 10th, and except the appellant, there is no any other responsible male member in her family, and all the responsibilities of maintaining the family and looking to the age of two marriageable daughters of the appellant, their marriage ceremonies are also required to be performed; I further submit that mental and physical condition of the appellant is not so good, he himself is suffering from blood pressure, Diabetes and prostate problem, and due to diabetes, in the month of September-October 2006, he became unconscious and going into

Comma and he was admitted in the UN Mehta Hospital, Civil Hospital, Campus, Ahmedabad. I respectfully submit that having regard to the peculiar set of fats and precarious position, of all the family members of the appellant, the mercy may be shown on the appellant and the sentence undergone so far may kindly be treated as sufficient sentence for the offences which this Hon'ble Court is considering as proved on record.”

32. Similarly, on behalf of A-2, Kanhaiyalal Shrihari Soni, paternal uncle (Fua) of A-2 has filed affidavit wherein, it is stated by him on oath as under:

“1. That appellant Nilesh happens to be my nephew and he has been convicted for the offences punishable under Sec.489-B and 489-C read with Sec.34 and 120B of Indian Penal Code and is directed to undergo 10 years rigorous imprisonment and fine of Rs.5,000/-

and in default to further undergo one year rigorous imprisonment. I say that the fine is already paid by him.

2. I say that the appellant Nilesh was shouldering the responsibility of his entire family consisting of his widow mother, his wife and two minor twins – one son and daughter aged four and half years who both are physically and mentally challenged. The appellant was also shouldering the responsibility of his younger brother who is also not earning anything. I say that the appellant Nilesh came to be taken in custody on 7.5.2004 and since then he is in jail as he was not on bail pending trial. I say that during the period of last 33 to 34 months while Nilesh is in judicial custody that his entire family is ruined and the family members of him consisting of his widow mother, wife and two minor physically and mentally challenged children and his younger brother could not manage themselves and they

are at present hand to mouth. I say that the other distant family members and relatives just out of the duty and responsibility are helping the whole family to be maintained and are providing and extending a little help for treatment of both physically and mentally challenged children of the appellant Nilesh. I may point out that minor female child who is mentally and physically challenged is also suffering from Cancer of brain. Some of the photographs of both the children are annexed hereto and marked for the kind perusal of this Hon'ble Court. I respectfully submit that having regard to the peculiar set of facts and precarious position of all the family members of the appellant, the mercy may be shown to the appellant and the sentence undergone so far may kindly be treated as sufficient sentence for the offences which this Hon'ble Court is considering as proved on record."

33. So far as A-3 is concerned, no affidavit

is filed showing mitigating circumstances for taking lenient view with regard to sentence. However, oral submission is made on his behalf by Mr. Lakhani that a lenient and sympathetic view may be taken in the case of A-3 also.

34. On the aforesaid premises, it is submitted by Ms. Sadhna Sagar and Mr. Yogesh Lakhani, learned advocates for the accused, that lenient view may be taken in their case with regard to sentence. According to them, the accused persons have undergone sentence of almost three years and the said period undergone by them may be treated as substantive sentence for commission of the offences proved against them and they may be set at liberty and they urged to pass appropriate order accordingly.

35. Mr. K.T. Dave, learned APP for the respondent, has opposed this submission by submitting that offence related to counterfeit currency notes is a serious offence and it is an offence against the Nation as it would affect the

economy of the country. He, therefore, urged that no leniency may be shown towards the accused persons while awarding the sentence to them.

36. This Court has given anxious and considerate thought to the rival submissions advanced by the learned advocates for the parties with regard to showing leniency towards them by reducing sentence. According to this Court, as stated in the affidavit filed by Vimlaben, wife of A-1, A-1 has the responsibility of the whole family and this is his first offence. Similarly, as stated in the affidavit filed by Kanhaiyalal Shrihari Soni, paternal uncle (Fua) of A-2, A-2 is having two physically and mentally challenged children and he has to look after them and at present they are hand to mouth. Therefore, on perusal of the contents of the affidavit filed on behalf of A-1 and A-2, we are of the considered opinion that their case is required to be sympathetically considered so far as awarding of the sentence is concerned.

37. In above view of the matter, according to us, if A-1 and A-2 are sentenced to suffer R.I. for three years and fine of Rs.2,500/- i.d., to suffer RI for further period of three months for commission of the offences punishable under Section 489B read with sections 34 and 120B IPC and A-1 and A-2 are also sentenced to suffer R.I. for three years and fine of Rs.2,500/- i.d., to suffer RI for further period of three months for commission of the offences punishable under Section 489C read with sections 34 and 120B IPC, and both the sentences are ordered to run concurrently, it would meet the ends of justice.

38. So far as A-3 is concerned, no affidavit is filed on his behalf showing mitigating circumstances for taking a lenient view. Moreover, case of A-3 cannot be equated with the case of A-1 and A-2 in view of his past antecedents and in view of the fact that other criminal cases have been field against him. Therefore, we are of the view that if A-3 is sentenced to suffer R.I. for five years and fine

of Rs.2,500/- i.d., to undergo RI for further period of 3 months for commission of offence under section 489B read with sections 34 and 120B IPC and R.I. for five years and fine of Rs.2,500/- i.d., to undergo RI for further period of 3 months for commission of offence under Section 489C read with sections 34 and 120B IPC and both the sentences are ordered to run concurrently, it would meet the ends of justice.

39. For the foregoing reasons, all the three appeals succeed in part and accordingly they are partly allowed qua sentence only. The judgment and order dated 9.6.2006 rendered in Sessions Case No.6 of 2005 by the learned Additional Sessions Judge, Fast Track Court No.2, Ahmedabad City, by which A-1, A-2 and A-3 have been convicted for commission of the offences punishable under Section 489B and Section 489C read with Section 34 and Section 120B IPC is confirmed and maintained.

39.1. So far as sentence is concerned, A-1 and

A-2 are sentenced to suffer R.I. for three years and fine of Rs.2,500/- i.d., to suffer RI for further period of three months for commission of the offences punishable under Section 489B read with sections 34 and 120B IPC and A-1 and A-2 are also sentenced to suffer R.I. for three years and fine of Rs.2,500/- i.d., to suffer RI for further period of three months for commission of the offences punishable under Section 489C read with sections 34 and 120B IPC. Both the sentences are ordered to run concurrently.

39.2. So far as sentence is concerned, A-3 is sentenced to suffer R.I. for five years and fine of Rs.2,500/- i.d., to suffer RI for further period of three months for commission of the offences punishable under Section 489B read with sections 34 and 120B IPC and A-3 is also sentenced to suffer R.I. for five years and fine of Rs.2,500/- i.d., to suffer RI for further period of three months for commission of the offences punishable under Section 489C read with sections 34 and 120B IPC. Both the sentences are

ordered to run concurrently.

39.3. All the three appeals are accordingly partly allowed as indicated above.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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